

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.74 OF 2005
IN
LETTERS PATENT APPEAL NO.109 OF 2003**

Nutan Warehousing Co
Pvt Ltd and ors. .. Petitioners
(Respondents)

Vs

Indian Bank, .. Respondents
(Appellants)

Shri G.S.Godbole i/b Shri Uday Warunjikar, for the
appellants.
Smt Mohana Nair i/b M/s Mohana Nair and Associates
for the respondents.

**CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.**

DATE : APRIL 27, 2005.

P.C.

1. Heard the learned counsel for the parties.
2. Letters Patent Appeal No.109 of 2003 was disposed of by an order dated 21.4.2005 in terms of the interim order dated 29.9.2003 passed by this Court at an interim stage on Civil Application No.204 of 2003 in LPA No.109 of 2003. On that day, Mr Warunjikar, learned counsel for the respondents, was absent. It should be noted that on an earlier occasion also when the matter was part-heard Mr Warunjikar was absent. Now, this civil application is moved pointing out that Mr Warunjikar was busy in

other court and on the cause-list published by the Advocates Association of Western India the matter was not shown and, therefore, it is claimed that Mr Warunjikar was not knowing that the matter was listed for final hearing before this Court. Under these circumstances, the matter has gone in his absence. It is further submitted by Mr Godbole that as against the interim order passed in the L.P.A, S.L.P. No.24275/03 is pending before the Apex Court and as a result of the disposal of the L.P.A., that S.L.P. may render as infructuous. Therefore, it is submitted that the order passed on 21.4.2005 may be recalled and the L.P.A may be restored. The learned counsel for the respondent factually has not disputed the fact that the matter was not shown on the cause-list published by Advocates Association of Western India, though the matter was published on the cause-list published by the High Court. The learned counsel for the respondents submitted that since on the earlier occasion the matter was part-heard, even though it is not reflected in the cause-list of the Bar Association and she got it confirmed from the cause-list published by the High Court and attended the matter. She also submitted that even though it is known to her that the S.L.P is pending in the Supreme Court, however, she did not find it necessary

to disclose the said fact to this Court since there is no interim relief granted by the Apex Court. So far as recalling of the order dated 21.4.2005 is concerned, she has opposed for recalling of the order.

3. We find that the matter was disposed of in the absence of Mr Warunjikar, learned counsel for the respondents. Had it been brought to our notice that the S.L.P is pending before the Supreme Court, probably, we would have refrained from proceeding with the matter. The facts and circumstances which have been brought to our notice at this stage, persuade us to recall the order dated 21.4.2005 and, therefore, the order dated 21.4.2005 passed in L.P.A. No.109 of 2003 is hereby recalled. The L.P.A. is restored to its original position including the restoration of the interim order which was then in force. The civil application is, accordingly, disposed of.

(D.B.BHOSALE, J.)

(S.B.MHASE, J.)